

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Portland General Electric Company
Enron Power Marketing, Inc.

Docket No. EL02-114-000
Docket No. EL02-115-001

ORDER ON MOTION TO COMPEL

(Issued April 11, 2003)

1. On March 13, 2001, the presiding administrative law judge (Presiding ALJ) issued a certified order (certified order) granting, pending Commission review, the motion filed by Portland General Electric Company (PGEC) to compel Staff to produce all documents Staff or its counsel copied or downloaded from the Commission's files in Docket No. PA02-2-000 during the course of this proceeding, including those documents that the Presiding ALJ reviewed during an in camera session on January 15, 2003. In this order, we address the more specific issue of whether the disclosed information must include all documents Staff copied or downloaded from the Commission's files in Docket No. PA02-2-000 (Docket No. PA02-2-000 documents), during the course of the Staff's investigation in this proceeding. Docket No. PA02-2-000 concerns the Commission's investigation into manipulation of energy prices in the West.

2. As part of the certified order, the Presiding ALJ allowed PGEC access to the Docket No. PA02-2-000 documents, rejecting Staff's argument that those documents are protected by investigatory privilege. The Presiding ALJ further determined that, even if the investigatory privilege attaches to the documents at issue, Staff waived that privilege by copying or downloading them in the course of preparing its evidence in this case. Moreover, the Presiding ALJ rejected Staff's argument that under Commission precedent, Staff is not required to provide privileged documents upon which it did not rely in preparing its testimony.¹

¹Staff argued that LILCO, 40 FERC ¶ 61,033 (1987), in which the Commission ruled that material reviewed, but not relied upon, by an expert witness is not discoverable, remains valid Commission precedent applicable to this case.

3. We find that our order directing the release of information in Docket No. PA02-2-000, issued on March 21, 2003 (March 21 Order),² and our subsequent notice in that proceeding, regarding accessibility of certain data and further requests for comments,³ issued on April 7, 2003 (April 7 Notice), are dispositive here. We will direct Staff to produce or identify all documents Staff or its counsel copied or downloaded from the Commission's files in Docket No. PA02-2-000 during the course of this proceeding, including those documents reviewed by the Presiding ALJ during the January 15, 2003 in camera session, except for those documents which the Commission has itself withheld, in accordance with the March 21 Order and April 7 Notice.

The Commission orders:

Staff is hereby directed to produce or identify all documents Staff or its counsel copied or downloaded from the Commission's files in Docket No. PA02-2-000 during the course of this proceeding, including those documents reviewed by the Presiding ALJ during the January 15, 2003 in camera session, except for those documents which the Commission has itself withheld, in accordance with the March 21 Order and April 7 Notice.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 102 FERC ¶ 61,311 (2003).

³Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Notice Regarding Public Accessibility of Data and Further Requests for Comments, April 7, 2003.